

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES H. FISHER,

Plaintiff,

No. CIV S-96-1850 DFL EFB P

vs.

JAMES GOMEZ, et al.,

Defendants.

ORDER

Plaintiff is a prisoner without counsel seeking relief pursuant to 42 U.S.C. § 1983. On July 17, 2006, the court directed defendant T. McDonald¹ to show cause in writing why sanctions, including striking the answer and entering default, should not be imposed for failure to comply with the court's May 31, 2006, order. Defendant has responded and plaintiff has requested the court impose sanctions for defendant's failure to comply with the May 31, 2006, order.

Defendant, through counsel, explains that after judgment mistakenly was entered, counsel closed this case and stored the file in archives and since the attorney who originally handled this case is no longer with the Office of the Attorney General, there was no clerical

¹ The court directed T. McDonald to show cause, but the findings and recommendations filed December 20, 2001, show that defendants did not seek summary judgment on plaintiff's excessive force claims against several defendants.

1 mechanism to bring this case to the attention of an attorney. Once counsel was made aware of
2 the activity in this case, counsel immediately responded to the court's order.

3 Good cause appearing, the court will vacate the July 17, 2006, order to show
4 cause.

5 Accordingly, it hereby is ordered that:

- 6 1. The July 17, 2006, order to show cause is hereby vacated;
- 7 2. Plaintiff's August 11, 2006, motion for the court to impose sanctions is denied;
- 8 3. Within 30 days of the date this order is served, defendants T. McDonald, J. D.
9 Harris, D. Harris, J. Campos and B. Edwards shall file and serve a pretrial statement.

10 Dated: August 29, 2006.

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EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE